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OF SAN FRANCISCO AND HEATHER FONG
(IN HER OFFICIAL CAPACITY)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TELITHA BALL, DESSIA
PATTERSON, a minor, TELITHA
PATTERSON, a minor, by and through
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, EARNEST FERRANDO,
EDWARD YU, MICHAEL BROWNE,
JAMERSON PON, JOHN
GREENWOOD, DOUGLASS FARMER,
WENDELL JONES, SEAN GRIFFIN,
REESE BURROWS, MICHAEL
NELSON, JOHN SYME, DAVID DO,
KEVIN MURRAY, MATTHEW
MASON, KEVIN CHIN, HEATHER
FONG, and DOES 1 to 30,

Defendants.

///

///

E-filing

EMC

CASE NO. **08 2831**

NOTICE OF REMOVAL

Under 28 U.S.C. §1441(a), (b)
(Federal Question)

Attached Documents

Exh. A: Register of Action, Superior Court of
California, County of San Francisco, *Ball et al.*
v. CCSF et al., Case No. 08-472360

Exh. B: Summons and First Amended
Complaint

Exh. C: Answer Of Defendants City And
County Of San Francisco And Heather Fong To
Plaintiffs' First Amended Complaint; Demand
for Jury Trial; Objection to Court
Commissioner

Removal Date: June 6, 2006

Trial Date: Not Set

1 TO: CLERK OF THE ABOVE-ENTITLED COURT:

2 TO: PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

3 PLEASE TAKE NOTICE that defendants City and County of San Francisco City and Police
4 Chief Heather Fong, in her official capacity ("Defendants"), hereby remove to this Court the state
5 court action described below.

6 1. On or about February 20, 2008, plaintiffs filed a complaint in the Superior Court in
7 and for the City and County of San Francisco, Case No. 08-472360. (the "State Court Case"). No
8 summons was issued and such complaint was not served on defendants. Attached hereto as Exhibit A
9 is the Superior Court Register of Actions reflecting the filing of the complaint.

10 2. On or about February 21, 2008, plaintiffs Telitha Ball, Dessia Patterson, a minor, and
11 Telitha Patterson, a minor, by and through their guardian ad litem Talitha Ball, filed a First Amended
12 Complaint against defendants City and County of San Francisco, Earnest Ferrando, Edward Yu,
13 Michael Browne, Jamerson Pon, John Greenwood, Douglass Farmer, Wendell Jones, Sean Griffin,
14 Reese Burrows, Michael Nelson, John Syme, David Do, Kevin Murray, Matthew Mason, Kevin
15 Chin, Heather Fong and Does 1 to 30, in the State Court Case.

16 3. Defendants are informed and believe that the first date upon which any defendant in
17 this action received a copy of the First Amended Complaint was May 7, 2008, when plaintiffs served
18 the City and County of San Francisco with a copy of the complaint by delivering a copy of the
19 Complaint to the Mayor's Office. Defendant Police Chief Heather Fong was thereafter served in her
20 official capacity on May 19, 2008, when plaintiffs had a copy of the complaint delivered to the Legal
21 Department of the San Francisco Police Department. Pursuant to 28 U.S.C. §1446(a), copies of the
22 Summons and First Amended Complaint, which constitutes all of the process, pleadings and orders
23 that have been received by the defendants in this case, are attached hereto as Exhibit B. Defendants
24 were not served with any corresponding notices or any other state court documents, including the
25 original complaint.

26 4. The First Amended Complaint purports to state *federal* claims pursuant to 28 U.S.C.
27 §1983 (for violation of Plaintiffs' federal constitutional rights) and *Monell v. Department of Social*
28 *Services of the City of New York*, 436 U.S. 658 (1978).

1 5. This action is therefore a civil action over which this Court has original jurisdiction
2 under 28 U.S.C. §1331, and is one which may be removed to this Court pursuant to 28 U.S.C.
3 § 1441(a) & (b), in that it arises under the federal civil rights laws.

4 6. The City and County of San Francisco and Police Chief Heather Fong (in her official
5 capacity) are the only defendants that have been served the Summons and First Amended Complaint
6 in the pending action. Attached hereto as Exhibit C are copies of the documents defendants have
7 filed in the State Court Case, including: 1) Answer Of Defendants City And County Of San
8 Francisco And Heather Fong To Plaintiffs' First Amended Complaint; 2) Demand For Trial By Jury
9 Of Defendants City And County Of San Francisco And Heather Fong; and 3) Defendants' Objection
10 To Court Commissioner Acting As Judge Pro-Tempore At Trial Pursuant To Local Rule 6.1(c).

11 **WHEREFORE**, Defendants pray that the above action now pending in the Superior Court of
12 the State of California in and for the City and County of San Francisco be removed in its entirety to
13 this Court for all further proceedings, pursuant to 28 U.S.C. § 1441, *et. seq.*

14 Dated: June 6, 2008

15 DENNIS J. HERRERA
16 City Attorney
17 JOANNE HOEPER
18 Chief Trial Attorney
19 KIMBERLY A. BLISS
20 Deputy City Attorney

21 By: 

22 KIMBERLY A. BLISS

23 Attorneys for Defendants
24 CITY AND COUNTY OF SAN FRANCISCO
25 AND HEATHER FONG (IN HER OFFICIAL
26 CAPACITY)

PROOF OF SERVICE

I, FOLASHADE ADESANWO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 5, 2008, I served the attached:

NOTICE OF REMOVAL

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Gregory M. Haynes
2443 Fillmore, #194
San Francisco, Ca 94115

Ph: (415) 546-0777

Fax: (650) 755-1563

Attorney for Plaintiffs: Telitha Ball, Dessia
Patterson, Telitha Petterson

and served the named document in the manner indicated below:

☒ **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

☐ **BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

☐ **BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was Fax #.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 5, 2008, at San Francisco, California.


FOLASHADE ADESANWO

EXHIBIT A

Superior Court of California, County of San Francisco

Case Number: CGC-08-472360

Title: TALITHA BALL et al VS. CITY AND COUNTY OF SAN FRANCISCO et al

Cause of Action: CIVIL RIGHTS

Generated: Jun-05-2008 5:38 pm PST

Register of Actions Parties Attorneys Calendar Payments Documents

Register of Actions

Date Range: First Date Feb-20-2008 Last Date Jun-05-2008 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence ▾

ALL FILING TYPES ▾

Submit

Date	Proceedings	Document	Fee
JUN-05-2008	DEMAND FOR JURY FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO FONG, HEATHER		
JUN-05-2008	OBJECTION TO HEARING BY COMMISSIONER/PRO TEM ACTING AS JUDGE FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO FONG, HEATHER		
JUN-05-2008	ANSWER TO 1ST AMENDED COMPLAINT FILED BY DEFENDANT CITY AND COUNTY OF SAN FRANCISCO FONG, HEATHER	View	EXEMPT
MAY-14-2008	ADDED TO PROOF OF SERVICE ORDER TO SHOW CAUSE CALENDAR HEARING SET FOR JUN-17-2008 AT 09:00 AM IN DEPT 212	View	
FEB-29-2008	SUMMONS ISSUED TO PLAINTIFF BALL, TELITHA GUARDIAN AD LITEM FOR DESSIA PATTERSON AND TELITHA PATTERSON PATTERSON, DESSIA A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TELITHA BALL PATTERSON, TELITHA A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TELITHA BALL	View	
FEB-28-2008	PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM (COURT APPOINTS TELITHA BALL AS GUARDIAN AD LITEM FOR TELITHA PATTERSON) NO S.A.S.E., COPY IN DEPT. 206 OUTBOX FILED BY PLAINTIFF BALL, TELITHA GUARDIAN AD LITEM FOR DESSIA PATTERSON AND TELITHA PATTERSON	View	
FEB-28-2008	PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM (COURT APPOINTS TELTHA BALL AS GUARDIAN AD LITEM FOR DESSIA PATTERSON) NO S.A.S.E., COPY IN DEPT. 206 OUTBOX FILED BY PLAINTIFF BALL, TELITHA GUARDIAN AD LITEM FOR DESSIA PATTERSON AND TELITHA PATTERSON	View	
FEB-21-2008	1ST AMENDED COMPLAINT FILED BY PLAINTIFF BALL, TELITHA GUARDIAN AD LITEM FOR DESSIA PATTERSON AND TELITHA PATTERSON PATTERSON, DESSIA A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TELITHA BALL PATTERSON, TELITHA A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TELITHA BALL AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO FERRANDO, EARNEST YU, EDWARD BROWNE, MICHAEL PON, JAMERSON GREENWOOD, JOHN FARMER, DOUGLASS JONES, WENDELL GRIFFIN, SEAN BURROWS, REESE NELSON, MICHAEL SYME, JOHN DO, DAVID MURRAY, KEVIN MASON, MATTHEW CHIN, KEVIN FONG, HEATHER DOES 1 TO 30	View	
FEB-20-2008	APPLICATION FOR WAIVER OF COURT FEES AND COSTS PURSUANT TO G.C. 68511.3 (CONFIDENTIAL) FILED BY PLAINTIFF BALL, TALITHA PATTERSON, DESSIE A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TALITHA BALL. ORDER GRANTING WAIVER OF COURT FEES AND COSTS PURSUANT TO CRC 3.50 - 3.63		
FEB-20-2008	NOTICE TO PLAINTIFF	View	
FEB-20-2008	CIVIL RIGHTS, COMPLAINT FILED BY PLAINTIFF BALL, TALITHA PATTERSON, DESSIE A MINOR BY AND THROUGH THEIR GUARDIAN AD LITEM TALITHA BALL AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO FERRANDO, EARNEST YU, EDWARD BROWNE, MICHAEL PON, JAMERSON GREENWOOD, JOHN FARMER, DOUGLASS JONES, WENDELL GRIFFIN, SEAN BURROWS, REESE NELSON, MICHAEL SYME, JOHN DO,	View	IFP

DAVID MURRAY, KEVIN MASON, MATTHEW CHIN, KEVIN FONG, HEATHER DOES 1 TO 30 NO SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR JUL-25- 2008 PROOF OF SERVICE DUE ON APR-21-2008 CASE MANAGEMENT STATEMENT DUE ON JUL-10-2008		
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EXHIBIT B

(CITACION JUDICIAL)**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

City and County of San Francisco, Earnest Ferrando, Edward Yu, Michael Browne, Jamerson Pon, John Greenwood, Douglass Farmer, Wendell Jones, Sean Griffin, Reese Burrows, Michael Nelson, John Syme, David Do,

Kevin Murray, Matthew Mason, Kevin Chin, Heather Fong and Does **1 to 30**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**

Telitha Ball, Dessia Patterson, a minor, Telitha Patterson, a minor, by and through their guardian ad litem, Telitha Ball

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California, City and County of San Francisco, 401 McAllister Street, Room 103, San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

472360

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gregory M. Haynes, Esq. 2443 Fillmore, #194 (415) 546-0777
San Francisco, Ca 94115 SB# 111574

DATE: **FEB 29 2008**

(Fecha)

GORDON PARK-LI

Clerk, by
(Secretario)

CAROLYN BALISTRERI

, Deputy
(Adjunto)

For proof of service of this summons, use Proof of Service of Summons (form POS-010).

Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☒ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

Gregory M. Haynes, Esq.
SBN: 111574
2443 Fillmore, #194
San Francisco, CA 94115
(415) 546-0777

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO
FEB 21 2008
GORDON PARK-LI, CLERK
BY: _____ Deputy Clerk

Attorney for Plaintiffs
Telitha Ball, Dessia Patterson,
a minor, Telitha Patterson,
a minor, by and through their
guardian ad litem Telitha Ball

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

Telitha Ball,
Dessia Patterson,
a minor, Telitha
Patterson, a minor,
by and through their
guardian ad litem
Telitha Ball,
Plaintiffs

First Amended Complaint
ACTION NO.: 472360

Violation of 42 Section
1983 Unreasonable Seizure;
Excessive Force;
Supervisory and Liability;
Monell

v.

City and County of San Francisco,
Earnest Ferrando, Edward Yu,
Michael Brownie, Jamerson Pon,
John Greenwood, Douglass Farmer,
Wendell Jones, Sean Griffin,
Reese Burrows, Michael Nelson,
John Syme, David Do, Kevin Murray,
Matthew Mason, Kevin Chin,
Heather Fong and
Does 1 to 30,
Defendants /

I

Plaintiffs in this matter complain of defendants and each of them as follows:

Defendants (Lt.) Earnest Ferrando, (Sergeant) John Greenwood, (Sergeant) Edward Yu, (Sergeant) Michael Browne, (Sergeant) John Syme, (Inp.) Jamerson Pon, (Officers) Douglass Farmer, Wendell Jones, Sean Griffin, Reese Burrows, Michael Nelson, David Do, Matthew Mason, Kevin Murray and Kevin Chin were at all times herein mentioned employed as police officers with for the City and County of San Francisco and were acting under color of law.

Defendant City and County of San Francisco is a public entity.

Defendant Heather Fong is the Chief of Police for the City and County of San Francisco at all times relevant herein

Plaintiffs are unaware of the true identities of the persons sued herein as does 1 to 30. Upon discovery the true identities of such person plaintiffs will identify such persons.

Each of the defendants herein was acting as the agent for the other at all times herein mentioned.

Plaintiffs in this matter are Telitha Ball, Dessia Patterson, a minor, and Telitha Patterson, a minor, by and through their guardian ad litem, Telitha Ball. Dessia Patterson and Telitha Patterson are minors and their guardian ad litem is Telitha Ball. Telitha Ball

1 is an individual plaintiff as well as the guardian ad
2 litem for the minors.

3 II

4 On or about 1-15-07, defendant officers indicated
5 that they were going to search the premises where the
6 plaintiffs live without a warrant. The officers
7 indicated that they were going to search the premises
8 in connection with an attempt to locate a suspect who
9 they unreasonably believed was at the premises. The
10 premises were also the home to the minor son of the
11 Talitha Ball. The officers believed that the son was
12 on probation at the time.

13 Defendant officers had the house under surveillance
14 and had stopped and detained persons who had exited the
15 premises approximately two hours earlier.

16 Prior to conducting the search without a warrant,
17 defendant officers saw plaintiff Telitha Ball in a
18 vehicle near her home. Plaintiff was stopped several
19 blocks from her home. The officers refused to release
20 plaintiff as well as others in the vehicle.

21 The officers searched the cell phones of plaintiff
22 and others in the car and seized such phones. While
23 detaining plaintiff the officers also refused to
24 release plaintiff so she could use a restroom, causing
25 plaintiff to relieve herself in public. Plaintiff was
26 detained for over an hour.

27 Plaintiff was concerned that the officers were
28 going to conduct an unreasonable search of her home and

1 in fact were doing so. In addition to her minor
2 teenage son, two minor daughters, plaintiffs Dessia
3 Patterson and Telitha Patterson and their father
4 resided at the home.

5 Plaintiff Telitha Ball requested permission to be
6 released, in part so she could return home to her minor
7 children and family, as she could hear what seemed to
8 be a search of her home which included helicopters and
9 police dogs.

10 Plaintiff Ball was advised that she would be
11 released if she consented to having her home searched
12 at one point during the detention.

13 Fearing for her family and wanting to be released,
14 so as, in part, she could return to her home to ensure
15 the safety of her family including the two daughters,
16 she consented under duress to the search of her home
17 and was released. After the permission through force
18 and under duress was given, the officer advised other
19 officers that a warrant was no longer needed because
20 they had plaintiff's consent. However, the officers
21 had executed the search prior to the request for
22 permission to search and well after plaintiff had
23 consented under duress to the search.

24 Defendants had offered as an explanation of
25 detaining plaintiff Ball that plaintiff was detained so
26 that she could not notify the occupants of the home of
27 the presence of defendants until after entry to the
28 home was made, due to the alleged violent nature of

1 both her minor son and the other suspect. Further, the
2 officer noted that there was some exigency because they
3 felt an occupant of the vehicle had called the house
4 while the vehicle was detained or about to be detained.

5 Upon arriving home, she saw the police had
6 forcibly entered causing damages to the house,
7 including the doors. The officers had entered the
8 house with guns and drawn and had frightening the
9 family at home, including her two minor daughters,
10 plaintiffs. Further, the officers entered the premises
11 unreasonably using both excessive force and giving
12 inadequate notice prior to entering, as well as
13 entering unlawfully.

14 The officers knew or should have known that the
15 family, including the minor daughters would be home and
16 subject to the excessive force and unreasonable entry
17 and search, which occurred in the earlier morning or
18 shortly after 12:00a.m.

19 The officers had continued the search of the home
20 once the plaintiff Ball had arrived, who advised her
21 that they in effect controlled the property and refused
22 to leave.

23 The two minor children under 6 years of age and
24 their father were detained and search at gun point, as
25 the officer entered the home with guns and police dogs.
26 The minor son was not home nor was the suspect they
27 were seeking arrest or locate.

28 After the unlawful entry and search of the home,

1 search and unlawful and unreasonable interference with
2 family relationships, were violated.

3 As a result of such violation, plaintiffs suffered
4 damages all according to proof at trial.

5 IV

6 **Second Cause of Action:**

7 **Monnel Liability**

8 Plaintiffs incorporate the allegations of
9 paragraphs I to III.

10 Defendant City and County of San Francisco has a
11 policy, practice or custom of unreasonable detaining,
12 arresting and searching and using excessive force.

13 Further, defendant has a policy, practice and
14 custom of unconstitutional conduct toward persons in
15 the community where plaintiffs lived, live or are
16 closely associated with.

17 As a result of such unlawful and unreasonable
18 conduct, plaintiffs' constitutional and federal rights
19 were violated, including Section 1983 of title 42 of
20 the United States.

21 As a result of such violation, plaintiffs
22 suffered damages all according to proof at trial.

23 V

24 **Third Cause of Action:**

25 **Supervisor Liability**

26 Plaintiffs incorporate the allegations of
27 paragraphs I to III.

28 Defendant Heather Fong is the Chief of Police in

1 San Francisco. Supervisory defendants and does 10 to
2 20 are both policymakers or nonpolicymaker or
3 comparable supervisors in connection with the police
4 department of the City and County of San Francisco and
5 the City and County of San Francisco generally.

6 Said defendants failed to properly train and
7 supervise its employees and policies with regard to the
8 above matter, and participated or authorized or
9 acquiesced in the unconstitutional conduct of which
10 plaintiffs herein was subjected to and complain of.

11 As a result of such unlawful and unreasonable
12 conduct, plaintiffs' constitutional and federal rights,
13 including Section 1983 of title 42 of the United States
14 Code, were violated.

15 As a result of such violation, plaintiffs
16 suffered damages all according to proof at trial.

17
18 WHEREFORE, plaintiffs request that this court award
19 a. Compensatory damages according to proof at trial;
20 b. Punitive damages according to proof at trial;
21 c. Attorney fees;
22 d. costs;
23 e. Such other and further relief as this Court may deem
24 proper

25 Plaintiffs herein hereby demand a jury trial.

26
27 DATE: 2/21/08

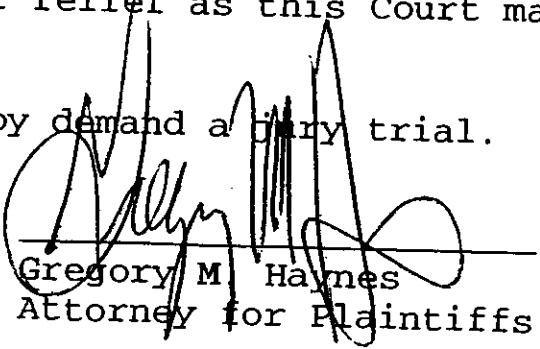
28 
Gregory M. Haynes
Attorney for Plaintiffs

EXHIBIT C

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
KIMBERLY A. BLISS, State Bar #207857
Deputy City Attorney
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3861
Facsimile: (415) 554-3837
E-Mail: kimberly.bliss@sfgov.org

Attorneys for Defendants CITY AND COUNTY
OF SAN FRANCISCO AND HEATHER FONG
(IN HER OFFICIAL CAPACITY)

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUN 05 2008

GORDON PARK-LI, CLERK

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

TELITHA BALL, DESSIA
PATTERSON, a minor, TELITHA
PATTERSON, a minor, by and through
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, EARNEST FERRANDO,
EDWARD YU, MICHAEL BROWNE,
JAMERSON PON, JOHN
GREENWOOD, DOUGLASS FARMER,
WENDELL JONES, SEAN GRIFFIN,
REESE BURROWS, MICHAEL
NELSON, JOHN SYME, DAVID DO,
KEVIN MURRAY, MATTHEW
MASON, KEVIN CHIN, HEATHER
FONG, and DOES 1 to 30,

Defendants.

Case No. CGC-08-472360

**ANSWER OF DEFENDANTS CITY
AND COUNTY OF SAN FRANCISCO
AND HEATHER FONG TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date Action Filed: February 20, 2008
Trial Date: Not Set

Defendants City and County Of San Francisco and Heather Fong (in her official capacity as
Chief of the San Francisco Police Department) (the "Defendants"), respond to Plaintiffs' unverified
First Amended Complaint ("complaint") as follows:

1 Pursuant to section 431.30 of the California Code of Civil Procedure, the Defendants deny
2 each and every allegation in the complaint.

3
4 **SEPARATE AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 (Failure to State a Claim)

7 Plaintiffs fail to state facts sufficient to constitute a cause of action against these defendants.

8 **SECOND AFFIRMATIVE DEFENSE**

9 (Comparative Negligence)

10 Defendants allege by way of a plea of comparative negligence that plaintiffs were negligent
11 in and about the matters and activities alleged in the complaint; that said negligence contributed to
12 and was a proximate cause of plaintiffs' alleged injuries and damages, if any, or was the sole cause
13 thereof; and that if plaintiffs are entitled to recover damages against these defendants, then
14 defendants pray that the recovery be diminished or extinguished by reason of the negligence of
15 plaintiffs in proportion to the degree of fault attributable to plaintiffs.

16 **THIRD AFFIRMATIVE DEFENSE**

17 (Contribution)

18 Defendants allege that the fault of persons other than these defendants contributed to and
19 proximately caused the occurrence; and under the principles formulated in the case of *American*
20 *Motorcycle Association v. Superior Court*, 20 Cal. 3d 578 (1978), and under the provisions of
21 California Civil Code §§1431, 1431.1, 1431.2 and 1431.3, these defendants pray that the percentage
22 of such contribution be established by special verdict or other procedure, and that these defendants'
23 ultimate liability be reduced to the extent of such contribution.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Statute of Limitations)

26 Defendants allege that the complaint and each and every cause of action therein is barred by
27 the statutes of limitations, including without limitation Government Code section 945.6 and
28 California Code of Civil Procedure section 335.1.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Defendants allege that the complaint and each and every cause of action therein is barred because plaintiffs failed to use reasonable diligence to mitigate their alleged damages, and said failure bars or reduces the recovery, if any, from these answering defendants.

SIXTH AFFIRMATIVE DEFENSE

(Defendants' Acts Not A Proximate Cause)

Defendants state that any act or omission on the part of the answering defendants was not the proximate cause of plaintiffs' alleged injuries.

SEVENTH AFFIRMATIVE DEFENSE

(Negligence of Third Parties - Equitable and Statutory Indemnity for Defendants)

Defendants state that plaintiffs' injuries were caused by the negligence or other act or omission of third parties, and defendants are entitled to equitable and statutory indemnity from such third parties.

EIGHTH AFFIRMATIVE DEFENSE

(Violation of Penal Code §834a)

Defendants allege that Plaintiff were under a duty pursuant to §834(a) of the California Penal Code to refrain from using force to resist their detention and/or arrest; that Plaintiffs breached this duty even though they knew or by the exercise of reasonable care should have known that they were being detained and/or arrested by a police officer; and that as a direct result of Plaintiffs' breach of this duty, Plaintiffs are barred from recovering any loss or damage they may have incurred.

NINTH AFFIRMATIVE DEFENSE

(Failure to State A Claim Under *Monell*)

Defendants allege that the Complaint fails to state a federal civil rights claim against Defendants under the doctrine announced in *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978).

TENTH AFFIRMATIVE DEFENSE

(Immunity - Barred by Tort Claims Act and Penal Code)

To the extent it attempts to state claims under California law, the complaint is barred by the provisions and immunities of the California Tort Claims Act, without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1; 830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8; and California Penal Code Sections 148, 409, 834a, 834, 835, 835a, 836, and 849. Under California law, these defendants are liable only pursuant to statute.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Comply With Claims Requirements—Presentation of All Claims)

Plaintiffs were required to present any and all state claims against the defendants in the form of a timely government claim. To the extent the complaint attempts to state any claims under California law, the complaint fails to state a cause of action and is accordingly barred pursuant to the California Government Code, including but not limited to Government Code Sections 905.2, 911.2 and 945.4.

TWELFTH AFFIRMATIVE DEFENSE

(Equitable Defenses)

By reason of Plaintiff's own acts and omissions, Plaintiffs are barred by the equitable doctrines of estoppel, laches, unclean hands, and waiver from seeking any recovery or injunctive relief from Defendants by reason of the allegations set forth in Plaintiffs' complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

Defendants are immune from liability for exemplary damages herein pursuant to the provisions of Section 818 of the California Government Code and federal law.

FOURTEENTH AFFIRMATIVE DEFENSE

(Violation of Penal Code)

Defendants allege that Plaintiffs violated certain provisions of the California Penal Code, and that Plaintiffs voluntarily assumed all risks, responsibility and liability for the injuries which were the natural and probable result of violating the California Penal Code.

FIFTEENTH AFFIRMATIVE DEFENSE

(Careless, Reckless, Wanton and Negligent Acts)

At all times mentioned in the complaint, the plaintiffs acted in a careless, reckless, wanton and negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton and negligent conduct proximately contributed to the injuries and damages, if any, sustained or claimed by plaintiffs; that as a consequence, plaintiffs' claims are barred.

SIXTEENTH AFFIRMATIVE DEFENSE

(Release)

Plaintiffs have released defendants of liability.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Frivolous Action)

Plaintiffs' maintenance of this action is frivolous, vexatious and unreasonable, thereby entitling the defendants to sanctions and appropriate remedies (including without limitation attorneys' fees) against plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSES

(Probable Cause)

Defendants had reasonable and/or probable cause to detain, restrain and/or arrest Plaintiffs.

NINETEENTH AFFIRMATIVE DEFENSE

(Qualified Immunity)

Defendants allege that the action complained of are protected by the doctrine of qualified immunity as set forth in *Anderson v. Creighton*, 107 S.Ct. 3034 (1984), and related cases.

TWENTIETH AFFIRMATIVE DEFENSE

(Self-Defense and Defense of Others)

Defendants alleges that if in fact any force was used against plaintiffs, such force was the lawful exercise of the right of self-defense and defense of the public, and any recovery pursuant to said use of force is barred.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendants presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendants reserve the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

WHEREFORE, defendant prays for judgment as follows:

1. That plaintiffs take nothing from defendants;
2. That the complaint be dismissed with prejudice;
3. That defendants recover costs of suit herein, including attorneys' fees; and
4. For such other relief as is just and proper.

Dated: June 5, 2008

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Attorney
KIMBERLY A. BLISS
Deputy City Attorney

By: 

KIMBERLY A. BLISS

Attorneys for Defendant CITY AND COUNTY OF
SAN FRANCISCO AND HEATHER FONG (IN HER
OFFICIAL CAPACITY)

PROOF OF SERVICE

I, FOLASHADE ADESANWO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 5, 2008, I served the attached:

**ANSWER OF DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO AND
HEATHER FONG TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

**Gregory M. Haynes
2443 Fillmore, #194
San Francisco, Ca 94115**

Ph: (415) 546-0777

Fax: (650) 755-1563

**Attorney for Plaintiffs: Telitha Ball, Dessia
Patterson, Telitha Petterson**

and served the named document in the manner indicated below:

☒ **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

☐ **BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

☐ **BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was Fax #.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 5, 2008, at San Francisco, California.


FOLASHADE ADESANWO

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
KIMBERLY A. BLISS, State Bar #207857
Deputy City Attorney
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3861
Facsimile: (415) 554-3837
E-Mail: kimberly.bliss@sfgov.org

Attorneys for Defendants CITY AND COUNTY OF
SAN FRANCISCO AND HEATHER FONG (IN HER
OFFICIAL CAPACITY)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

TELITHA BALL, DESSIA
PATTERSON, a minor, TELITHA
PATTERSON, a minor, by and through
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, EARNEST FERRANDO,
EDWARD YU, MICHAEL BROWNE,
JAMERSON PON, JOHN
GREENWOOD, DOUGLASS FARMER,
WENDELL JONES, SEAN GRIFFIN,
REESE BURROWS, MICHAEL
NELSON, JOHN SYME, DAVID DO,
KEVIN MURRAY, MATTHEW
MASON, KEVIN CHIN, HEATHER
FONG, and DOES 1 to 30,

Defendants.

Case No. CGC-08-472360

**DEMAND FOR TRIAL BY JURY OF
DEFENDANTS CITY AND COUNTY
OF SAN FRANCISCO AND HEATHER
FONG**

Date Action Filed: February 20, 2008
Trial Date: Not Set

Defendant City and County of San Francisco and San Francisco Chief of Police Heather
Fong (in her official capacity) hereby demand a trial by jury in the above captioned matter.

1 Dated: June 5, 2008

2 DENNIS J. HERRERA
3 City Attorney
4 JOANNE HOEPER
5 Chief Trial Attorney
6 KIMBERLY A. BLISS
7 Deputy City Attorney

8 By: 

9 KIMBERLY A. BLISS

10 Attorneys for Defendants CITY AND COUNTY
11 OF SAN FRANCISCO AND HEATHER FONG
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PROOF OF SERVICE

I, FOLASHADE ADESANWO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 5, 2008, I served the attached:

DEMAND FOR TRIAL BY JURY OF DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO AND HEATHER FONG

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Gregory M. Haynes
2443 Fillmore, #194
San Francisco, Ca 94115

Ph: (415) 546-0777
Fax: (650) 755-1563
Attorney for Plaintiffs: Telitha Ball, Dessia
Patterson, Telitha Petterson

and served the named document in the manner indicated below:

☒ **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 5, 2008, at San Francisco, California.


FOLASHADE ADESANWO

DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
KIMBERLY A. BLISS, State Bar #207857
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1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3861
Facsimile: (415) 554-3837
E-Mail: kimberly.bliss@sfgov.org

Attorneys for Defendants CITY AND COUNTY OF
SAN FRANCISCO AND HEATHER FONG
(IN HER OFFICIAL CAPACITY)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

TELITHA BALL, DESSIA
PATTERSON, a minor, TELITHA
PATTERSON, a minor, by and through
their Guardian ad litem, TELITHA BALL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, EARNEST FERRANDO,
EDWARD YU, MICHAEL BROWNE,
JAMERSON PON, JOHN
GREENWOOD, DOUGLASS FARMER,
WENDELL JONES, SEAN GRIFFIN,
REESE BURROWS, MICHAEL
NELSON, JOHN SYME, DAVID DO,
KEVIN MURRAY, MATTHEW
MASON, KEVIN CHIN, HEATHER
FONG, and DOES 1 to 30,

Defendants.

Case No. CGC-08-472360

**DEFENDANTS' OBJECTION TO
COURT COMMISSIONER ACTING
AS JUDGE PRO-TEMPORE AT
TRIAL PURSUANT TO LOCAL RULE
6.1(C)**

Date Action Filed: February 20, 2008
Trial Date: Not Set

TO ALL PARTIES, TO THEIR ATTORNEYS OF RECORD AND TO THE COURT:

PLEASE TAKE NOTICE that, pursuant to Uniform Local Rule 6, Defendants City and
County of San Francisco and Heather Fong (in her official capacity) hereby object to a Court

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUN 05 2008

GORDON PARK-LL, CLERK

BY: Deputy Clerk

1 Commissioner acting as a Judge Pro Tempore for the purposes of presiding over the trial in the
2 above-captioned case. At this time, defendants will not stipulate to a Court Commissioner acting
3 as a Judge Pro Tempore for the purposes of presiding over the trial. Defendants, however,
4 reserve the right to consider this option and to enter such a stipulation at a later time.

5 Dated: June 5, 2008

6 DENNIS J. HERRERA
7 City Attorney
8 JOANNE HOEPER
9 Chief Trial Attorney
10 KIMBERLY A. BLISS
11 Deputy City Attorney

12 By: 
13 KIMBERLY A. BLISS

14 Attorneys for Defendants CITY and COUNTY OF
15 SAN FRANCISCO AND HEATHER FONG
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PROOF OF SERVICE

I, FOLASHADE ADESANWO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 5, 2008, I served the attached:

**DEFENDANTS' OBJECTION TO COURT COMMISSIONER ACTING AS JUDGE
PRO-TEMPORE AT TRIAL PURSUANT TO LOCAL RULE 6.1(C)**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Gregory M. Haynes
2443 Fillmore, #194
San Francisco, Ca 94115

Ph: (415) 546-0777

Fax: (650) 755-1563

**Attorney for Plaintiffs: Telitha Ball, Dessia
Patterson, Telitha Petterson**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 5, 2008, at San Francisco, California.


FOLASHADE ADESANWO